

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16224 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MARUTI RASAYAN

Versus

SALES TAX OFFICER - 1 CLASS - 1

Appearance:

1. Special Civil Application No. 16224 of 2003
MR TANVISH U BHATT for Petitioner No. 1
MR SIRAJ GORI, A.G.P for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 02/12/2003

ORAL JUDGEMENT

1. RULE. Service of rule is waived by learned A.G.P Shri Siraj Gori for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. The petitioner is a partnership firm, which has challenged the validity of seizure of goods, which were being transported in a tanker bearing No. GJ-12-U-8666, at Songadh check post. The petitioner firm has also challenged the validity of an order dated 30th October, 2003 passed under Section 48 of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Act")

3. Learned advocate Shri Tanvish Bhatt appearing for the petitioner has submitted that without any justifiable reason tanker bearing No. GJ-12-U-8666, through which H-Phenol was being transported, had been seized by the respondent authorities. According to him, the sale which was effected by the petitioner, had been evidenced by bill no. 306 and, therefore, there was no justifiable reason for seizure of the chemical.

4. Another grievance which has been ventilated in this petition is with regard to an order dated 30th October, 2003 passed under Section 48 of the Act, whereby a sum of Rs.4,24,669/- belonging to the petitioner lying with Punjab National Bank has been attached and the Manager, Punjab National Bank, Astodia Branch has been directed to deposit the said amount with the government treasury alongwith necessary challan.

5. Looking to the nature of the chemical, which was being transported in the tanker, by an order dated 25th November, 2003, this Court had directed that the said chemical be released and the learned advocates appearing for the parties have submitted that the possession of the said chemical has been given to the petitioner firm.

6. So far as the transaction under which the chemical in question has been sold, it has been submitted by the learned advocate that till today time for filing the return in respect of the said transaction has not become due and, therefore, there was no question of filing any return in respect of the said sale. It has been further submitted that the tax which might become payable in respect of the said sale, shall be paid by the petitioner to the concerned respondent authority on or before 15th December, 2003.

7. So far as another grievance with regard to attachment of the bank account is concerned, upon perusal of the impugned order, it appears that the said order has been passed under the provisions of Section 48 of the Act. Section 48 of the Act reads as under:

"48.SPECIAL MODE OF RECOVERY.

Notwithstanding anything contained in any law or contract to the contrary, the Commissioner may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last address known to the Commissioner, require, -

(a) any person from whom any amount of money is due, or may become due to a dealer and on whom notice has been served under sub-section (4) of Section 47, or

(b) any person who hold or may subsequently hold money or on account of such dealer,

to pay to the Commissioner, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (but not before the money becomes due or is held as aforesaid), so much of the money as is sufficient to pay the amount due by the dealer in respect of the arrears of tax, penalty, or interest or the whole of the money when it is equal to or less than that amount.

Explanation....."

8. It has been submitted by learned advocate Shri Tanvish Bhatt that no amount was due and payable by the petitioner to the respondent authority in respect of sales tax. According to him, as no amount was due and payable, it was not open to the respondent authorities to attach the bank account of the petitioner.

9. Learned A.G.P Shri Siraj Gori was specifically asked whether any amount had become due and payable by the petitioner by way of tax or penalty before the impugned order dated 30th October, 2003 was passed. The learned A.G.P. could not show any order whereby any amount had become due and payable, which remained unpaid before 31st October, 2003. Of course, the learned A.G.P has referred to certain orders which have been passed, after the impugned order had been passed. Looking to the language of Section 48 of the Act, the orders, which have

been passed after 30th October, 2003, cannot justify the impugned order because in anticipation of a future liability, order under Section 48 of the Act cannot be passed. As no order demanding any amount of tax had been passed before 30th October, 2003, in our opinion, the impugned order dated 30th October, 2003 could not have been passed.

10. Thus, the impugned order dated 30th October, 2003 is bad in law and, therefore, it is quashed and set aside. Necessary intimation shall be given to the Manager, Punjab National Bank, Astodia Branch, by the respondent authorities immediately so that the petitioner can operate the said account.

11. Learned advocate Shri Tanvish Bhatt appearing for the petitioner has submitted that the petitioner would undertake to make payment of penalty if any, imposed upon him in respect of the transaction referred to hereinabove. An undertaking to that effect shall be filed by one of the partners of the petitioner firm on or before 15th December, 2003.

12. The grievance was made by the advocate for the petitioner that the books of account of the petitioner have been seized and, therefore, it would be difficult for the petitioner to file its return within the time prescribed under the Act. The learned A.G.P. has submitted that the books of accounts or copies thereof shall be supplied to the petitioner as soon as possible, so as to enable the petitioner to file its return.

13. We clarify that we have not gone into the merits of the case, and no observation has been made with regard to legality or validity of the transaction or proceedings referred to hereinabove. It would be open to the respondent authorities to take appropriate action in accordance with law if any default has been committed by the petitioner firm

14. In view of the above facts, the petition stands disposed of as allowed. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.R. DAVE, J.)

(K.A. PUJ, J.)

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